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06                   UNITED STATES DISTRICT COURT  
07                   WESTERN DISTRICT OF WASHINGTON  
08                   AT SEATTLE

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STEPHEN LEE CZAPLA,	)	CASE NO. C08-0084-RSM-MAT
Plaintiff,	)	
v.	)	REPORT AND RECOMMENDATION
OFFICER KELLEY., et al.,	)	
Defendants.	)	

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14                   INTRODUCTION AND SUMMARY CONCLUSION

15       This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff Stephen Czapla has  
16   been granted leave to proceed *in forma pauperis*. Service has not yet been ordered. This Court  
17   concludes that plaintiff has failed to state a claim upon which relief may be granted as to five of  
18   the seven defendants identified in his amended complaint. This Court therefore recommends that  
19   this action be dismissed as to those five defendants and that plaintiff be permitted to proceed with  
20   respect to the two remaining defendants.

21                   DISCUSSION

22       On January 18, 2008, plaintiff presented to this Court for filing a civil rights complaint

01 under 42 U.S.C. § 1983. Plaintiff alleged in his complaint that Seattle Police used unnecessary  
02 force in effectuating his arrest, denied him medical care for injuries suffered during the arrest, and  
03 failed to impound his van resulting in the loss of plaintiff's personal property. Plaintiff further  
04 alleged that he was denied medication and treatment at the King County Jail for his mental and  
05 physical health. Finally, plaintiff alleged that he was improperly denied release following his arrest,  
06 and he was subsequently sentenced based on false evidence. Plaintiff identified the following  
07 defendants in his original complaint: the Seattle Police Department Domestic Violence Unit, the  
08 King County Jail Medical Staff, and King County Superior Court Judges DuBuque and Carey.

09 After reviewing plaintiff's complaint, this Court determined that the complaint was  
10 deficient and did not warrant service. Thus, on February 25, 2008, this Court issued an Order  
11 declining to serve the complaint and granting plaintiff leave to amend his complaint to correct  
12 specified deficiencies. On March 4, 2008, plaintiff filed an amended complaint in which he  
13 identified seven defendants and set forth several claims for relief arising out of his arrest by Seattle  
14 Police Officers on August 16, 2007, and again on November 2, 2007. While plaintiff has arguably  
15 alleged a viable cause of action against two of the seven defendants, plaintiff's claims against most  
16 of the defendants remain deficient. Those deficient claims should be dismissed and plaintiff should  
17 be permitted to proceed on the claims that appear viable. The Court will address plaintiff's claims  
18 against the individual defendants below.

19 King County Deputy Prosecuting Attorney Adrienne McCoy

20 Plaintiff alleges in his amended complaint that King County Deputy Prosecuting Attorney  
21 Adrienne McCoy had him arrested from work release without probable cause. The United States  
22 Supreme Court has held that, in light of common law immunity principles, persons who perform

01 official functions in the judicial process are absolutely immune from liability for damages under 42  
02 U.S.C. § 1983. *Briscoe v. LaHue*, 460 U.S. 325, 334-36 (1983). Prosecutors have specifically  
03 been accorded absolute immunity from § 1983 claims for acts done within the scope of their  
04 official duties. *Imbler v. Pachtman*, 424 U.S. 409 (1976). "If the prosecutor acts as an advocate  
05 'in initiating a prosecution and in presenting the State's case,' absolute immunity is warranted."  
06 *Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d 675, 678 (9th Cir. 1984) (quoting  
07 *Imbler*, 424 U.S. at 430-431).

08 The facts alleged by plaintiff suggest that defendant McCoy was acting within the scope  
09 of her responsibilities as an advocate for King County when she engaged in the conduct  
10 complained of by plaintiff. Defendant McCoy is therefore immune from liability for damages in  
11 this action under § 1983 and, thus, plaintiff's amended complaint should be dismissed as to this  
12 defendant pursuant to 28 U.S.C. § 1915(e)(2)(B).

13 Seattle Police Officers Roufs and Conners

14 Plaintiff alleges in his amended complaint that Seattle Police Officers Roufs and Conners  
15 failed to properly inventory and impound his van, as plaintiff had requested they do at the time of  
16 his arrest, and that his personal property was stolen as a result. Plaintiff seeks compensation for  
17 his lost property.

18 The Due Process Clause provides that no person shall be deprived of "life, liberty, or  
19 property, without due process of law." U.S. Const. Amend. V. However, where a state  
20 employee's random, unauthorized act deprives an individual of property, either negligently or  
21 intentionally, the individual is relegated to his state post-deprivation process, so long as the state  
22 provides an adequate post-deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984);

01 *Parratt v. Taylor*, 451 U.S. 527, 540-41 (1981), overruled on other grounds by *Daniels v.*  
02 *Williams*, 474 U.S. 327 (1986).

03 Washington State provides a post-deprivation remedy for the alleged tortious conduct of  
04 city and county employees' under RCW 4.96. Plaintiff does not allege any due process inadequacy  
05 in the tort remedy provided under RCW 4.96. Thus, plaintiff has not alleged a viable claim for  
06 relief with respect to the loss of his personal property and his amended complaint should be  
07 dismissed as to defendants Roufs and Conners pursuant to 28 U.S.C. § 1915(e)(2)(B).

08 Seattle Police Officer Vandenburg

09 Plaintiff alleges in his amended complaint that Seattle Police Officer Vandenburg prepared  
10 a certification for determination of probable cause which was based on circumstantial evidence and  
11 which did not, in fact, establish probable cause. Plaintiff also asserts that Officer Vandenburg  
12 perjured himself in this document. It appears from the face of the amended complaint that the  
13 certification for determination of probable cause led to plaintiff's arrest on a charge of violating  
14 a no contact order. Plaintiff was apparently on work release at the time of his arrest in November  
15 2007, and he was subsequently sentenced to serve 12 months confinement as a result of the  
16 violation.

17 Where a prisoner challenges the fact or duration of his confinement, his sole federal remedy  
18 is a writ of habeas corpus, to which the exhaustion requirement applies. *Preiser v. Rodriguez*, 411  
19 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th Cir. 1990), cert. denied, 498  
20 U.S. 1126 (1991). In *Heck v. Humphrey*, 512 U.S. 477 (1994), the United States Supreme Court  
21 held that a claim under § 1983 that calls into question the lawfulness of a plaintiff's conviction or  
22 confinement does not accrue "unless and until the conviction or sentence is reversed, expunged,

01 invalidated, or impugned by the grant of a writ of habeas corpus." *Id.* at 489.

02 It appears that a decision in plaintiff's favor on his claim against defendant Vandenburg  
03 would likely undermine the validity of his current confinement. Plaintiff makes no showing that  
04 his current confinement has been invalidated. Accordingly, plaintiff's claim against defendant  
05 Vandenburg has not yet accrued and, thus, plaintiff's amended complaint should be dismissed as  
06 to this defendant pursuant to 28 U.S.C. § 1915(e)(2)(B).

07 Seattle Police Officer Raguso

08 Plaintiff identifies Seattle Police Officer Raguso as a defendant in this action. However,  
09 plaintiff fails to allege any specific facts demonstrating that defendant Raguso personally  
10 participated in causing him any harm of constitutional dimension. Plaintiff, therefore, has not  
11 adequately alleged a cause of action against defendant Raguso. *See Crumpton v. Gates*, 947 F.2d  
12 1418, 1420 (9th Cir. 1991). Accordingly, plaintiff's amended complaint should be dismissed has  
13 as to defendant Raguso pursuant to 28 U.S.C. § 1915(e)(2)(B).

14 Seattle Police Officers Wilkes and Kelley

15 Plaintiff alleges in his amended complaint that Seattle Police Officers Wilkes and Kelley  
16 participated in his arrest on August 16, 2007. Plaintiff further alleges that officers used excessive  
17 force in effectuating that arrest. These allegations are arguably sufficient to permit plaintiff to  
18 proceed against defendants Wilkes and Kelley. Accordingly, service should be ordered on these  
19 two defendants.

20 Additional Claims

21 In addition to the claims addressed above, plaintiff makes a number of other allegations  
22 of improper conduct by police officers without specifying the officer(s) engaged in the alleged

01 misconduct. Plaintiff should not be permitted to proceed with respect to any such claim at this  
02 time. Plaintiff may, of course, seek leave of court to amend his complaint at a later date to add  
03 claims and/or defendants if he has additional, viable, constitutional claims he wishes to pursue.

04 **CONCLUSION**

05 For the foregoing reasons, this Court recommends that plaintiff's amended complaint, and  
06 this action, be dismissed as to defendants McCoy, Roufs, Conners, Vandenburg, and Raguso. The  
07 dismissal of defendant McCoy should be with prejudice and the dismissal of the remaining  
08 defendants should be without prejudice. The Court further recommends that plaintiff be permitted  
09 to proceed with his claims against defendants Wilkes and Kelley. A proposed order accompanies  
10 this Report and Recommendation.

11 DATED this 18th day of April, 2008.

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13 Mary Alice Theiler  
14 United States Magistrate Judge

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